

# SOUTH ISLAND IQP REGISTRATION PANEL

(Independent Qualified Persons)

PO Box 522

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## COMPLAINTS PROCEDURES – APPENDIX 1

Procedure for the management of complaints relating to an Independent Qualified Person registered on the South Island IQP Register

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## 1.0 Interpretations

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|                                             |                                                                                                                                                                                        |
|---------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>ACT</b>                                  | The Building Act 2004                                                                                                                                                                  |
| <b>Appellant</b>                            | The person who appeals a decision of the Quorum                                                                                                                                        |
| <b>Chairperson</b>                          | Means the Chairperson of the South Island IQP Registration Panel.                                                                                                                      |
| <b>Complainant</b>                          | Means any person/organisation who has laid a complaint to the South Island IQP Registration Panel.                                                                                     |
| <b>Disciplinary matter</b>                  | Means an inquiry into, or complaint about the conduct of an Independent Qualified Person                                                                                               |
| <b>Hearing</b>                              | Means a meeting of the Quorum on a disciplinary matter. This can be held in person or virtually.                                                                                       |
| <b>Independent Qualified Person (I Q P)</b> | Means a person as defined by Building Act 2004 interpretation for an Independent Qualified Person.                                                                                     |
| <b>Majority</b>                             | This is where a number or percentage equalling more than half of a total                                                                                                               |
| <b>Majority Vote</b>                        | A majority vote is when more than half of the votes is in favour of a particular decision                                                                                              |
| <b>Meeting</b>                              | Means a meeting of a quorum of the Panel for purposes of undertaking the business of the South Island IQP Registration Panel. The meeting can be held in person or virtually           |
| <b>Member</b>                               | Means a member of the South Island IQP Registration Panel                                                                                                                              |
| <b>Nominee</b>                              | Means a person selected to be on the Quorum, by a Panel member                                                                                                                         |
| <b>Panel</b>                                | Means the Panel responsible for the administration of the South Island IQP Register comprised of member territorial authorities                                                        |
| <b>Panel Member</b>                         | A Territorial Authority who is a member of the South Island IQP Registration Panel                                                                                                     |
| <b>Presiding Member</b>                     | Means the chairperson of the Panel or if the chairperson is not present the deputy chairperson, if neither are available the nominee elected by the Quorum to be the presiding member. |
| <b>Quorum</b>                               | Not fewer than two Nominees and the presiding member.                                                                                                                                  |
| <b>Register</b>                             | Means the register of Independent Qualified Persons approved by the South Island Registration Panel.                                                                                   |
| <b>Regulations</b>                          | Regulations which directly relate to the Building Act 2004                                                                                                                             |
| <b>Respondent</b>                           | Means an Independent Qualified Person (IQP) who is registered on the South Island IQP Register and is the subject of the complaint                                                     |
| <b>Secretary</b>                            | Means the Secretary of the South Island IQP Registration Panel.                                                                                                                        |
| <b>Special Advisor</b>                      | Means a person appointed by the Quorum to assist them in investigating a complaint                                                                                                     |

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## 2.0 General

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### 2.1 Scope of procedures and policies

These procedures apply to:

- The processing of complaints regarding the performance of Independent Qualified Persons (IQP) registered with the South Island IQP Registration Panel.
- All member Territorial Authorities (TA) of the SI IQP register, maybe parties to a complaint.
- Any Person or Organisation that wish to lay a complaint against an IQP.

### 2.2 Legislative framework

The Building Act 2004

- Sets out the requirements for the issue of Compliance Schedules and provisions relating to the issue and receipt of Building Warrant of Fitness' (BWOFs)

Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005

- This regulation identifies the Specified Systems required to be identified in a Compliance Schedule.

Building (Forms) Regulations 2004

- This regulation prescribes the forms to be used in the compliance schedule and BWOF process.

Building (Infringement Offences, Fees, and Forms) Regulations 2007

- This regulation prescribes the Infringement offences and fees in relation to the compliance schedule and BWOF process.

Building Regulations 1992 (New Zealand Building Code)

- This regulation contains the Building Code, in Schedule 1 of the Building Regulations 1992, which sets performance standards all new building work must meet, and covers aspects such as stability, protection from fire, access, moisture, safety of users, services and facilities, and energy efficiency.

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## 3.0 Complaints

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### 3.1 Introduction

Any member, person or organisation may complain to the South Island IQP Registration Panel about the conduct or behaviour of an Independent Qualified Person who is registered with the South Island IQP Registration Panel.

### 3.2 Grounds for complaint

The Panel may take disciplinary action in relation to a complaint, or a matter raised by the Panels own inquiries, if they are satisfied that an Independent Qualified Person.

- Has been convicted of an offence punishable by imprisonment
- Has breached the South Island IQP Panels Code of Conduct for IQP's
- Has carried out IQP work that the person is not approved to carry out.
- Has provided a false or misleading building warrant of fitness.
- Has provided a false or misleading information to owners, TA's or any other person or organisation.
- Has provided a false statement in respect of any work.
- Has offended in general against any of the provisions of the Building Act 2004 and associated Regulations in respect of Compliance schedules, BWOs or the issue of Form 12As.
- Any other work/processes/behaviour that would make the Respondent unfit to be an IQP.

### 3.3 Making a complaint

A complaint must be made in writing to the Panel, the complaint should include:

- Name and contact details of the complainant.
- The name, IQP Registration number and contact details of the person who is being complained about.
- Details of the complaint.
- Any available evidence supporting the complaint. Please see the complainant guidance to show what is required. Using the complainant guidance
- Indicate the urgency of the complaint, with reference to the potential risk of an individual's safety.

### 3.4 Upon receipt of complaint

The Secretary shall:

- Receive the complaint.
- Ensure that there is sufficient information provided to support a complaint.
- Check the jurisdiction of the complaint.
- Acknowledge receipt of the complaint to the complainant; and
  - If a complaint had not been lodged correctly, the Secretary will contact the complainant and request the additional information required.
- Advise the respondent once a complete complaint had been received, as per section 3.9

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## 3.5 Jurisdiction

The Secretary shall:

- Confirm validity of complaint.
- In checking whether a complaint is valid the Secretary needs to consider issues such as:
  - Whether the person being complained about was an approved IQP at the time when the work complained about was carried out.
  - Whether the complaint clearly does not warrant further investigation, e.g. the IQP no longer practices.

## 3.6 Lapse of complaint

If the complaint is not lodged correctly after 20 working days since the request for information from the Secretary, the Secretary will advise the complainant in writing that the complaint has lapsed and no further action will take place.

If a complaint is lapsed the Secretary will provide the Panel Chairman with a summary of facts.

Lapsing of a complaint does not prevent the complainant from resubmitting the complaint once they have the missing information required. This will restart the complaints process from the beginning.

## 3.7 Consolidation of complaints

If two or more complaints are about substantially the same IQP or subject matter, the complaints may be consolidated into one hearing.

The Secretary will advise all complainants and Respondent that their complaints have been consolidated into one hearing.

Factors for joining the complaints include, but are not limited to:

- The nature and strength of the interest of the complaints.
- The interest and material to be advanced can be adequately dealt with together.
- The impact of consolidation and whether this would unduly prolong the matter.

## 3.8 Withdrawal of complaint

A complainant may withdraw his or her complaint at any time by notice in writing to the Secretary until the hearing is closed.

Despite the withdrawal of a complaint (including after a hearing has been commenced) the Panel or Quorum may make inquiries into or continue to investigate the complaint. If the decision is made by either the Panel or Quorum to continue the complaint, the Respondent will be notified, and the complaint will continue as per the normal process.

On receipt of the notice of the withdrawal the Secretary will immediately advise the Panel Chairperson/Presiding Member, and the Respondent notified that the complaint has been withdrawn by the Complainant but under review by the Panel Chairperson/Presiding Member.

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If the complaint is withdrawn prior to the hearing, the Panel Chairperson will review the withdrawn complaint, to see if it is warranted to continue to complaints process. If they believe it is warranted, they will add it is an agenda item which they will speak to, on the next South Island IQP Panel meeting, for a majority vote to continue the complaint process.

If the complaint is withdrawn during a hearing, the Presiding Member shall immediately ask for a majority vote from the Quorum whether or not to continue the complaints process. If it is decided to continue, the hearing shall continue. If the decision is not to continue the Presiding Member shall advise the Respondent if present that the complaint has been withdrawn and the Panel deems this complaint for the Complainant closed, if the Respondent is not present, they shall advise the Secretary to advise the Respondent in writing.

If the Presiding Member decides that the complaint does not warrant continuation, they will advise the Secretary to advise the Respondent in writing that the complaint has been withdrawn and the Panel deems this complaint for the complainant closed.

## 3.9 Respondent

The Secretary will on receiving a complete complaint forward the complaint to the Respondent and provide the following information

- Guidance documentation for the Respondent
- Invite the Respondent to comment on the facts and evidence provided by the complainant
- To provide any additional relevant information and evidence that was submitted with the complaint and/or is relevant to the complaint
- Timeframe for the response to the complaint (20 working days)
- Advise them of the complaint procedure and indicative a date for the hearing, if available

## 3.10 Secretary's report

The Secretary must prepare a report, once the Respondent has replied, or if the Respondent does not reply within the allocated timeframe.

The report must include:

- Full details of the complaint
- Full response from the Respondent, or detail that the Respondent has failed to reply
- Any additional information or evidence received
- Summary
- 

## 3.11 Report review

The Secretary's report will be reviewed by the Panel Chairperson and Deputy Chairperson.

This is to ensure that the complaint warrants a full complaints process, and that the complaint falls within the SI IQP Panels jurisdiction. If it is deemed that it does warrant a full complaint procedure, then the process will continue as per section 4.0

If it is deemed a complaint that does not warrant a full complaints process, the Complainant and Respondent will be advised, this may include directions and referrals for the parties involved.

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## 4.0 Prior to the Hearing

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### 4.1 Quorum Request

Once the Secretary has advised the Respondent of the complaint, the Secretary will send a request to all Panel members for Nominees available for the complaints hearing and become quorum members, giving an indicative date for the hearing.

The Panel members must provide nominees within 10 working days.

The Secretary will advise the Panel Chairperson of the complaint and the indicative date of the hearing.

### 4.2 Quorum advice

After nominees for the hearing have been received, the Secretary will send out guidance documentation to be signed and returned and advise who the Respondent is. The Respondent will have the opportunity to advise of any potential conflicts of interest before any Panel members receive further information on the complaint.

Once the Secretary has completed the report and received nominations for the hearing from the Panel members, they will send out the following to the nominees:

- Copy of the complaint
- Copy of the response from the Respondent
- Secretary's report
- Undertake a consideration of the complaint

### 4.3 Consideration of Complaint

Quorum members must review the documentation provided and advise the Secretary within 5 working days via email whether or not to:

- Dismiss the complaint
- Proceed to the Hearing
- Refer the complaint to another organisation

The Secretary will collate the majority considerations and advise the Complainant and Respondent:

- If the complaint has been dismissed
- If the complaint has been referred to another organisation
- If the complaint will proceed to a hearing and the hearing date

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## 4.4 Quorum member requests

During the review of the documentation the quorum members may request a special adviser(s) to attend the hearing or provide comments, opinion, or advice on any information supplied by the complainant or respondent. The quorum members may, on the evidence, request a witness to provide evidence on that point. Any witness cannot be compelled to give evidence.

The Secretary will collate these requests and send a summary to the nominees

The Nominees will have 5 working days to review the requests and either approve or disapprove of the request for a special adviser(s)

The Secretary will collate the approval or disapprovals and advise the Nominees of the majority result

If the approval succeeds by majority, then the Secretary will request the special advisor(s) or Witness.

## 4.5 Witnesses

A complainant or Respondent intending to call witnesses must submit a list of witnesses to the Secretary at least 20 working days before the commencement of the hearing.

The complainant's briefs of evidence should be provided to the Secretary alongside this list and at least 20 working days before the commencement of the hearing.

The Respondent's briefs of evidence for each witness should be provided to the Secretary at least 10 working days before the hearing.

## 4.6 Agenda

The Secretary will send out at least 5 working days before the hearing a copy of the agenda for the hearing, with confirmation of the time and location.

## 5.0 The Hearing

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### 5.1 Conduct

The Panel must conduct the hearing in an inquisitorial manner, rather than adversarial one.

### 5.2 Presiding Member

At the hearing the Panel Chairperson presides.

- If the Panel Chairperson is not available, then the Deputy Chairperson shall preside.
- If neither the Panel Chairperson or Deputy Panel Chairperson are available, then the quorum members shall vote for one of the attending quorum members to be the presiding quorum member shall be for the hearing. And the majority voted person shall become the presiding quorum member.

### 5.3 Who may be heard at hearing

The following persons are entitled to be heard at a hearing.

- The Complainant or appointed representative
- The Respondent or appointed representative
- Witness for the respondent and complainant
- Any persons requested as an expert/witness by the Quorum
- Special advisers appointed by the Quorum
- The Secretary
- The Presiding Member
- Any member of the Quorum
- Any other person with the permission of the Quorum

### 5.4 Suppression

The only parties who may be at the hearing are the parties listed 5.3

The Quorum as part of the decision will decide if the decision is private or public as a separate matter from the hearing during the deliberation.

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## 5.5 Hearing Procedure

Hearings will generally adopt the following procedure:

- The Presiding Member commences the hearing.
- Commencing an electronic recording of the hearing.
- Stating his or her name, inviting the other attending Quorum members, the Secretary, the Complainant, the Respondent and counsel (if applicable) to introduce themselves by stating their name.
- Reading into the record a statement about the purpose of the hearing, including the details of the complaint.
- Providing a summary of the procedure that will be adopted for the hearing.
- Explaining that if a party is to give evidence, they will be sworn by taking an oath on the Bible or making an affirmation.
- The Secretary presents the report on the complaint summarising the details of the complaint, including:
  - the grounds for the complaint; and
  - any facts disputed between the parties.
- The Complainant is to be provided with the opportunity to confirm that the Secretary's reports are accurate and to provide any further information.
- The Respondent is invited to respond to the Secretary's report and present any argument and/or evidence in support of his or her defence of the complaint.
- The Respondent may also question the Complainant and any witness.
- The Quorum may question the Complainant, the Respondent, special adviser and any witness at any time during the hearing.
- Both the Complainant and Respondent are to be invited to make a closing statement. The closing statement is in reliance on evidence from the hearing.
- The Presiding Member adjourns the hearing and advises the Complainant and Respondent that a decision on the complaint will be undertaken in a closed session
- The Quorum will proceed to a closed session and will deliberate on the decision.
- Once the decision is made the hearing will be reconvened.
- The Presiding Member will announce the decision to the Complainant and Respondent.
- If the decision is to uphold the complaint, the Quorum will call on the Complainant and Respondent to provide input on what they believe the penalty should be.
- After the Complainant and Respondent have been heard the Presiding Member shall close the hearing again to deliberate the penalty.
- The Quorum will deliberate the penalty in the closed session.
- Once the penalty has been decided the Chairperson will reconvene the hearing
- The Presiding Member will advise the Complainant and Respondent of the penalty decided.
- The Presiding Member will then close the hearing.

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## 6.0 The Decision

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### 6.1 Decision Members

After the hearing is adjourned the Quorum will deliberate in private before reaching a decision on a complaint. No persons other than the Quorum members, Presiding Member & Secretary who were at the hearing are to be present.

### 6.2 Decision

The decision shall be made to uphold or reject the complaint and:

- State what the decision is.
- State the reason for the decision.

This Decision shall be voted on and decided by the majority of Quorum members.

The Secretary will record the decision.

### 6.3 Advising the hearing on the decision

The Presiding Member will reconvene the hearing.

The Presiding Member will advise the Complainant and Respondent of the decision the quorum to uphold or reject the complaint.

If the decision was to reject the complaint, the Presiding Member will close the hearing and direct the Secretary to send a written confirmation of the decision to both the Complainant and Respondent.

If the decision was to uphold the complaint, the hearing will move onto the Penalties section.

## 7.0 Penalties

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### 7.1 Hearing

The Presiding Member will ask both the Complainant and Respondent for their statement on what the penalty should be.

After the Complainant and Respondent have made their statements, the Presiding Member will close the hearing again to deliberate the penalty.

### 7.2 Deliberation

The Presiding Member will convene the deliberation on the penalty

The Quorum may impose one or more of the following disciplinary penalties

- Direct the Secretary to remove the respondent's names from the register.
- Suspend the respondents practicing certificate for a period of up to 12 months or until the respondent meets conditions applied by the Quorum.
- Restrict the Respondent to the type of work, and/or supervision by another IQP.
- Direct the Respondent undertake specific training.
- Order that the Respondent be censured.
- Warning under the code of conduct.

The quorum will take into consideration the statements from the Complainant and Respondent.

The penalty will be decided on by majority vote by the Quorum members.

The Quorum will also decide if the penalty is to be kept private or publish the decision and penalty, this will be decided by majority vote.

Once decided the Secretary will record the decision.

### 7.3 Notification of decision

The Presiding Member will reconvene the hearing.

The Presiding Member will advise the Complainant and Respondent of the penalty.

The Presiding Member will close the hearing.

The Secretary will then send a written confirmation of the penalty to the Complainant and Respondent

The Secretary must implement the Quorums decision on penalty if required as soon as practicable and advise the respondent when it is done, and not later than 10 working days.

The Secretary will publish the decision and penalty in the IQP newsletter after the 20-day appeal window has passed if the decision and penalty are public, this will also be recorded on the online profile if the decision is public.

## 8.0 Appeals

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### 8.1 Appellant

Either the Complainant or the Respondent may appeal the decision of the hearing, the party that appeals the decision is known as the Appellant.

### 8.2 Appeal Timeframe

The appeal must be made within 20 working days from the date the Secretary has sent the hearing decision.

### 8.2 Appeal Application

The Appellant must apply in writing to the Panel.

The application for appeal must include:

- Note the Complainant and Respondent for the hearing that the decision was made.
  - Reason for the appeal.
  - Detail the points of the decision that appeal is based on.
- Highlight any other reason that the appellant believes warrants the appeal.

### 8.3 Appeal Received

The Secretary shall on receipt of the appeal:

- Notify the Panel Chairperson of the appeal.
- Notify the Panel Deputy Chairperson of the appeal.
- Notify the presiding member of the Quorum who undertook the decision.

The Secretary shall send a copy of the appeal to the Panel Chairperson & Deputy Chairperson

### 8.4 Appeal Decision

The Panel Chairperson and Deputy Chairperson shall review the appeal submission within 10 working days of the submission.

If they agree that the appeal provides information that would or could change the outcome of the hearing quorum then the appeal is accepted, and the appeals process continues

If they agree that the appeal provides no information that would or could change the outcome of the hearing quorum then the appeal is rejected, and a letter shall be sent via the Secretary to advise that the appeal has been rejected.

If the Panel Chairperson and Deputy Chairperson do not agree then the appeal process shall continue as if the appeal was accepted.

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## 8.5 Appeal Progression

The Secretary shall

- Place the appeal on the agenda for the next South Island IQP Panel meeting.
- Advise the appellant of the next South Island IQP Panel meeting when the appeal will be reviewed.
- Advise the other party of the decision of the appeal.

The Secretary shall attach the complaint, response and decision on the agenda to be sent out prior to the meeting, this will allow panel members to review before the meeting.

## 8.6 Appeal Process

The appeal will be actioned as an agenda item on the next South Island IQP Panel meeting.

The Panel Chairperson or Deputy Panel Chairperson shall open discussion to the panel for review of the decision. Any members of the original quorum must abstain from being a part of this discussion and following vote.

After panel discussion a majority vote will be undertaken for the next action, the choices of.

- Rescind the decision entirely and decided if a new hearing is warranted.
- Uphold the decision but with changed penalties to be determined by the panel at this meeting.
- Uphold the decision in its entirety.

The panel decision will be entered into the minutes.

## 8.7 Appeal Decision

The Secretary will after the South Island IQP Panel meeting has concluded send written notification of the outcome to the appellant within 5 working days.

This notification will advise that the matter has been resolved and no further appeal can be entered into.

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## 9.0 Follow Up

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### 9.1 Monitoring

The Secretary shall undertake monitoring of any decision that has a timeframe component.

### 9.2 Confirmation

The Secretary shall correspond with all parties involved with the decision outcome that the penalties/decision has been resolved appropriately.

Parties are allowed to advise the Secretary if they have met all the decision requirements before the timeframe if appropriate.

### 9.3 Failure to comply

If the parties have failed to comply with the decision requirements, the Secretary will place an item on the next South Island IQP Panel meeting agenda.

The Secretary shall attach the complaint, response, decision and relevant correspondence on the agenda to be sent out prior to the meeting, this will allow panel members to review before the meeting.

### 9.4 Decision Review

The decision will be actioned as an agenda item on the next South Island IQP Panel meeting.

The Panel Chairperson or Deputy Panel Chairperson shall open discussion to the panel for review of the decision.

After panel discussion a majority vote will be undertaken for the next course of action, decision to be proposed by the panel.

The panel decision will be entered into the minutes.

### 9.5 Follow Up Decision

The Secretary will after the South Island IQP Panel meeting has concluded send written notification of the outcome to the affected parties within 5 working days.